

The Hazardous Materials Division (HMD) inspects plating shops annually. The HMD will also inspect your facility if one of your employees, a neighbor, another agency, or a concerned citizen alleges a complaint against your business. The HMD inspectors are authorized by law to enter your facility during business hours to inspect for hazardous materials and hazardous waste requirements.

### **WHAT TYPES OF REPORTS ARE ISSUED DURING AN INSPECTION?**

#### **Compliance Inspection Report (CIR)**

The Compliance Inspection Report (CIR) is the first step in reporting an environmental compliance violation observed during an inspection. The CIR details the observation of the violation, the law, regulation, and/or ordinance cited, and the requirements for return to compliance which must include a “not later than” date. Your business is required to document your return to compliance with your HMD area inspector. The inspector will leave a Corrective Action Form to Document Return to Compliance, which needs to be returned to HMD within the specified time.

#### **Official Notice**

The Official Notice is one step above the CIR and details the observation of the violation, the law, regulation, and/or ordinance cited, and the requirements for return to compliance which must include a “not later than” date. The Official Notices are used to obtain compliance:

- ✓ When repeated minor violations occur; or
- ✓ When first time violations need immediate correction.

#### **Notice of Violation (NOV)**

The Notice of Violation (NOV) is one step above the Official Notice. The NOV details the observation of the violation, the law, regulation, and/or ordinance cited, and the requirements for return to compliance which must include a “not later than” date. If you receive a NOV during an inspection, then the HMD most likely will initiate one of the formal enforcement options. **NOTE:** An Official Notice may not always have to precede a NOV.

All of the above are considered to be informal enforcement tools used by HMD to gain compliance. They are considered to be informal because, as issued, they do not result in a penalty. However, all of them can also be used as evidence for formal enforcement if there are significant violations or a history of chronic violations.

## **WHAT IS HMD'S ENFORCEMENT PHILOSOPHY?**

The Hazardous Materials Division (HMD) uses education as the primary means of gaining compliance. However, when education alone is not sufficient to gain compliance, the HMD will utilize one or more methods of either informal or formal enforcement. In general, it is the philosophy of the HMD to gain compliance through the following methods:

- Educating the regulated community
- Promoting compliance of the laws and regulations within the regulated community
- Returning violators to compliance in a timely manner
- Initiating and concluding enforcement activities in a timely manner
- Penalizing violators, as appropriate, and depriving violators of any significant benefit gained from violations
- Preventing any business from having an unfair business advantage through noncompliance
- Treating similar facility owners and operators equally and consistently with regard to the same types of violations
- Deterring violators of laws and regulations

## **WHAT TYPES OF FORMAL ENFORCEMENT DOES HMD PURSUE IF A BUSINESS COMMITTS SIGNIFICANT VIOLATIONS OR IS A CHRONIC VIOLATOR?**

**Formal Enforcement** is an action that requires an obligation to comply and imposes sanctions for the prior failure to comply. Sanctions include fines and penalties as well as other tangible obligations, beyond returning to compliance, that are imposed upon the regulated business. Formal Enforcement Options that the HMD may pursue are as follows:

- ✓ **Administrative Enforcement Order (AEO)** is a formal means of enforcement utilized when a violator does not respond to a Notice To Comply or a Notice of Violation. The AEO basically consists of: (a) notification of corrective action to abate the effects of hazardous waste; (b) an assessment of penalties; and (c) an assessment of agency costs of enforcement. In general, administrative enforcement actions will be pursued for:
  - a. Class I violations;
  - b. Chronic or recalcitrant violators who actively refuse to comply with the regulatory requirements.
- ✓ **Civil Cases** are generally referred to the District Attorney's office or City Attorney's office, but may also be referred to the State Attorney General or the U.S. Attorney's office. Factors indicating that a civil action should be pursued include:
  - a. Need for injunctive relief to obtain compliance;
  - b. One or more Class I violations or other significant violations requiring formal enforcement;

- c. Multi-jurisdictional issues
  - d. Cases with statewide significance; and
  - e. Existing HMD administrative enforcement orders or settlements were violated.
- ✓ **Criminal Cases** are generally referred to the District Attorney's office or City Attorney's office, but may also be referred to the State Attorney General or the U.S. Attorney's office. Factors indicating that a criminal action should be pursued include:
- ✓
- a. Violations are major;
  - b. Acts are intentional;
  - c. Civil or administrative remedies are inadequate;
  - d. Evidence is sufficient to support the criminal burden of proof.

### **WHAT ARE THE VARIOUS CLASSES OF VIOLATIONS?**

There are three types of violations, Class I (Significant Violations), Class II, and Minor.

✓ **Class I Violation:**

1. A deviation from the requirements of HSC Chapter 6.5 that represents a significant threat to human health or safety or the environment because of one or more of the following:
  - a. The volume of the waste
  - b. The relative hazard of the waste
  - c. The proximity of the population at risk
2. A deviation from the requirements significant enough that it could result in a failure to accomplish any of the following:
  - a. Ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility.
  - b. Prevent releases of hazardous waste or constituents to the environment during the active or post closure period of facility operation.
  - c. Ensure early detection of releases of hazardous waste.
  - d. Ensure adequate financial resources in the case of releases of hazardous waste or constituents.
  - e. Ensure adequate financial resources to pay for facility closure.
  - f. Perform emergency cleanup operations of, or other corrective actions for, releases.

✓ **Class II Violation:**

A Class II violation is usually a violation that is not significant enough to be classified as a Class I violation but more serious than a minor violation. Class II violations are often chronic violations committed by recalcitrant violators. Evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements is used to determine if a violation is chronic or a violator is recalcitrant.

✓ **Minor Violation:**

A Minor violation does not otherwise include any of the following:

1. A violation that results in injury to persons or property.
2. A knowing, willful or intentional violation.
3. A chronic violation, or one committed by a recalcitrant violator.
4. A violation that enables the violator to benefit economically from the non-compliance.
5. A violation that hinders the ability of HMD to determine compliance.
6. A violation that results in an emergency response from a public safety agency.